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NOTICE OF ALLOWANCE AND FEE(S) DUE

7590

08/15/2002

T. Ling Chwang
Jackson Walker L.L.P.
2435 N. Central Expressway,
Suite 600
Richardson, TX 75080

EXAMINER

CHAKRABARTI, ARUN K

ART UNIT

CLASS-SUBCLASS

1634

435-440000

DATE MAILED: 08/15/2002

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/620,060	07/21/2000	Lonnie O. Ingram	BCI-0092CCPCN2 (UF REF NO	4257

TITLE OF INVENTION: RECOMBINANT CELLS THAT HIGHLY EXPRESS CHROMOSOMALLY-INTEGRATED HETEROLOGOUS GENES

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$640	\$0	\$640	11/15/2002

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. **PROSECUTION ON THE MERITS IS CLOSED.** THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE REFLECTS A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE APPLIED IN THIS APPLICATION. THE PTOL-85B (OR AN EQUIVALENT) MUST BE RETURNED WITHIN THIS PERIOD EVEN IF NO FEE IS DUE OR THE APPLICATION WILL BE REGARDED AS ABANDONED.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above. If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is changed, pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above and notify the United States Patent and Trademark Office of the change in status, or

B. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check the box below and enclose the PUBLICATION FEE and 1/2 the ISSUE FEE shown above.

☐ Applicant claims SMALL ENTITY status.
See 37 CFR 1.27.

II. PART B - FEE(S) TRANSMITTAL should be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). Even if the fee(s) have already been paid, Part B - Fee(s) Transmittal should be completed and returned. If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Box ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail Box ISSUE FEE
Commissioner for Patents
Washington, D.C. 20231
Fax (703)746-4000

INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 4 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Legibly mark-up with any corrections or use Block 1)

7590

08/15/2002

T. Ling Chwang
 Jackson Walker L.L.P.
 2435 N. Central Expressway,
 Suite 600
 Richardson,, TX 75080

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Box Issue Fee address above, or being facsimile transmitted to the USPTO, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/620,060	07/21/2000	Lonnic O. Ingram	BCI-0092CCPCN2 (UF	4257

TITLE OF INVENTION: RECOMBINANT CELLS THAT HIGHLY EXPRESS CHROMOSOMALLY-INTEGRATED HETEROLOGOUS GENES

APPLN. TYPE	SMALL ENTITY	ISSUE FEE	PUBLICATION FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	YES	\$640	\$0	\$640	11/15/2002

EXAMINER	ART UNIT	CLASS-SUBCLASS
CHAKRABARTI, ARUN K	1634	435-440000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.563).

- ☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.
- ☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/47; Rev 03-02 or more recent) attached. Use of a Customer Number is required.

2. For printing on the patent front page, list (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed.

1 _____
 2 _____
 3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. Inclusion of assignee data is only appropriate when an assignment has been previously submitted to the USPTO or is being submitted under separate cover. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY and STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent)

☐ individual ☐ corporation or other private group entity ☐ government

4a. The following fee(s) are enclosed:

4b. Payment of Fee(s):

- ☐ Issue Fee
- ☐ Publication Fee
- ☐ Advance Order - # of Copies _____

- ☐ A check in the amount of the fee(s) is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Commissioner is hereby authorized by charge the required fee(s), or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

Commissioner for Patents is requested to apply the Issue Fee and Publication Fee (if any) or to re-apply any previously paid issue fee to the application identified above.

(Authorized Signature)

(Date)

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, Washington, D.C. 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, Washington, DC 20231.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

TRANSMIT THIS FORM WITH FEE(S)



UNITED STATES PATENT AND TRADEMARK OFFICE

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09/620,060	07/21/2000	Lonnie O. Ingram	BCI-0092CCPCN2 (UF	4257
7590	08/15/2002		REF NO	EXAMINER
T. Ling Chwang Jackson Walker L.L.P. 2435 N. Central Expressway, Suite 600 Richardson,, TX 75080			CHAKRABARTI, ARUN K	
			ART UNIT	PAPER NUMBER
			1634	
DATE MAILED: 08/15/2002				

Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The patent term adjustment to date is 0 days. If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the term adjustment will be 0 days.

If a continued prosecution application (CPA) was filed in the above-identified application, the filing date that determines patent term adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) system. (<http://pair.uspto.gov>)



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7590	08/15/2002		REF NO	EXAMINER
T. Ling Chwang Jackson Walker L.L.P. 2435 N. Central Expressway, Suite 600 Richardson,, TX 75080 UNITED STATES			CHAKRABARTI, ARUN K	
			ART UNIT	PAPER NUMBER
			1634	
DATE MAILED: 08/15/2002				

Notice of Fee Increase on October 1, 2002

If a reply to a "Notice of Allowance and Fee(s) Due" is filed in the Office on or after October 1, 2002, then the amount due may be higher than that set forth in the "Notice of Allowance and Fee(s) Due" since there will be an increase in fees effective on October 1, 2002. See Revision of Patent and Trademark Fees for Fiscal Year 2003: Notice of Proposed Rulemaking, 67 Fed. Reg. 30634, 30636 (May 7, 2002). Although a change to the amount of the publication fee is not currently proposed for October 2002, if the issue fee or publication fee is to be paid on or after October 1, 2002, applicant should check the USPTO web site for the current fees before submitting the payment. The USPTO Internet address for the fee schedule is: <http://www.uspto.gov/main/howtofees.htm>.

If the issue fee paid is the amount shown on the "Notice of Allowance and Fee(s) Due," but not the correct amount in view of the fee increase, a "Notice to Pay Balance of Issue Fee" will be mailed to applicant. In order to avoid processing delays associated with mailing of a "Notice to Pay Balance of Issue Fee," if the response to the Notice of Allowance and Fee(s) due form is to be filed on or after October 1, 2002 (or mailed with a certificate of mailing on or after October 1, 2002), the issue fee paid should be the fee that is required at the time the fee is paid. If the issue fee was previously paid, and the response to the "Notice of Allowance and Fee(s) Due" includes a request to apply a previously-paid issue fee to the issue fee now due, then the difference between the issue fee amount at the time the response is filed and the previously paid issue fee should be paid. See Manual of Patent Examining Procedure, Section 1308.01 (Eighth Edition, August 2001).

Effective October 1, 2002, 37 CFR 1.18 is proposed to be revised to change the patent issue fees as set forth below. As stated above, the final fees may be a different amount, and applicant should check the web site given above when paying the fee.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:

By a small entity (Sec. 1.27(a))--\$655.00

By other than a small entity--\$1,310.00

(b) Issue fee for issuing a design patent:

By a small entity (Sec. 1.27(a))--\$235.00

By other than a small entity--\$470.00

(c) Issue fee for issuing a plant patent:

By a small entity (Sec. 1.27(a))--\$315.00

By other than a small entity--\$630.00

Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at (703) 305-8283.

Notice of Allowability

Application No.

09/620,060

Applicant(s)

Ingram

Examiner

Arun Chakrabarti

Art Unit

1634



--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course.

THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS. This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 7/22/02.
2. ☒ The allowed claim(s) is/are 1-5, 7-16, 35-39, 41, 46, 48, and 49.
3. ☒ The drawings filed on Jul 21, 2000 are accepted by the Examiner.
4. ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

5. ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment/Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the top margin (not the back) of each sheet. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 4 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. <u>15</u> |
| 5 <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449), Paper No(s). <u>9</u> | 6 <input type="checkbox"/> Examiner's Amendment/Comment |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| 9 <input type="checkbox"/> Other | |

Art Unit: 1634

DETAILED ACTION

REASONS FOR ALLOWANCE

1. The present invention is related to a recombinant host cell strain that is the product of a process comprising the steps of: a) providing a culture comprised of enteric bacterial host cells comprising a pyruvate formate lyase promoter which is endogenous to the host cells and a DNA encoding a pyruvate formate lyase gene under transcriptional control of the promoter; b) transforming host cells in the culture with a heterologous DNA molecule comprising (I) two genetic elements assembled such that the coding regions of both elements are translated in the same direction, and (ii) sequences that flank the genetic elements and are oriented such that their direction of translation is the same as that of the two heterologous genetic elements, and (iii) sequences that flank the genetic elements and are sufficiently homologous to the pyruvate formate lyase gene to enable integration by homologous recombination, whereby integration of the genetic elements into the pyruvate formate lyase gene results by means of homologous recombination; c) selecting for host cells produced in step b) that express the selectable marker polypeptide at a first level; d) screening host cells obtained in step c) to obtain host cells that produce the desired polypeptide at an initial level; e) optionally exposing host cells identified in step d) to a mutagen under conditions such that mutations are created in the DNA; and then f) testing host cells produced in step d) or e) for host cells that produce the marker polypeptide at a level higher than the initial level, to obtain host cells having a mutation that causes increased expression of the upstream genetic element resulting in an increase in production by the host

Art Unit: 1634

cells of all polypeptides encoded by the heterogeneous DNA molecule compared to the production of all polypeptides encoded by the heterologous DNA molecule by the host cells in the absence of the mutation. Although, Ingram et al. (U.S. Patent 6,107,093) (August 22, 2000) teach a recombinant host cell strain that is the product of a process comprising the steps of: a) providing a culture comprised of enteric bacterial host cells comprising a pyruvate formate lyase promoter which is endogenous to the host cells and a DNA encoding a pyruvate formate lyase gene under transcriptional control of the promoter; b) transforming host cells in the culture with a heterologous DNA molecule comprising (I) two genetic elements assembled such that the coding regions of both elements are translated in the same direction, and (ii) sequences that flank the genetic elements and are oriented such that their direction of translation is the same as that of the two heterologous genetic elements, and (iii) sequences that flank the genetic elements and are sufficiently homologous to the pyruvate formate lyase gene to enable integration by homologous recombination, whereby integration of the genetic elements into the pyruvate formate lyase gene results by means of homologous recombination; c) selecting for host cells produced in step b) that express the selectable marker polypeptide at a first level; d) screening host cells obtained in step c) to obtain host cells that produce the desired polypeptide at an initial level; e) optionally exposing host cells identified in step d) to a mutagen under conditions such that mutations are created in the DNA; and then f) testing host cells produced in step d) or e) for host cells that produce the marker polypeptide at a level higher than the initial level, to obtain host cells having a mutation that causes increased expression of the upstream genetic element resulting in an

Art Unit: 1634

increase in production by the host cells of all polypeptides encoded by the heterogeneous DNA molecule compared to the production of all polypeptides encoded by the heterologous DNA molecule by the host cells in the absence of the mutation, Ingram et al. is not a prior art in view of the terminal disclaimer submitted in paper No: 14.

In view of the absence of either teaching or suggestion of such a recombinant host cell strain that is the product of a process comprising the steps of: a) providing a culture comprised of enteric bacterial host cells comprising a pyruvate formate lyase promoter which is endogenous to the host cells and a DNA encoding a pyruvate formate lyase gene under transcriptional control of the promoter; b) transforming host cells in the culture with a heterologous DNA molecule comprising (i) two genetic elements assembled such that the coding regions of both elements are translated in the same direction, and (ii) sequences that flank the genetic elements and are oriented such that their direction of translation is the same as that of the two heterologous genetic elements, and (iii) sequences that flank the genetic elements and are sufficiently homologous to the pyruvate formate lyase gene to enable integration by homologous recombination, whereby integration of the genetic elements into the pyruvate formate lyase gene results by means of homologous recombination; c) selecting for host cells produced in step b) that express the selectable marker polypeptide at a first level; d) screening host cells obtained in step c) to obtain host cells that produce the desired polypeptide at an initial level; e) optionally exposing host cells identified in step d) to a mutagen under conditions such that mutations are created in the DNA; and then f) testing host cells produced in step d) or e) for host cells that produce the marker

Art Unit: 1634

polypeptide at a level higher than the initial level, to obtain host cells having a mutation that causes increased expression of the upstream genetic element resulting in an increase in production by the host cells of all polypeptides encoded by the heterogeneous DNA molecule compared to the production of all polypeptides encoded by the heterologous DNA molecule by the host cells in the absence of the mutation, the present invention is novel and non-obvious.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arun Chakrabarti, Ph.D., whose telephone number is (703) 306-5818. The examiner can normally be reached on 7:00 AM-4:30 PM from Monday to Friday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jones, can be reached on (703) 308-1152. The fax phone number for this Group is (703) 305-7401. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group analyst Chantae Dessau whose telephone number is (703) 605-1237.

Arun Chakrabarti,


Application/Control Number: 09/620,060

Page 6

Art Unit: 1634

Patent Examiner,

July 23, 2002


W. Gary Jones
Supervisory Patent Examiner
Technology Center 1600

Interview Summary

Application No.
09/620,060

Applicant(s)
Ingram

Examiner
Arun Chakrabarti

Art Unit
1634



All participants (applicant, applicant's representative, PTO personnel):

(1) Arun Chakrabarti

(3) _____

(2) Peter Lauro

(4) _____

Date of Interview Jul 22, 2002

Type: a) ☒ Telephonic b) ☐ Video Conference
c) ☐ Personal (copy is given to 1) ☐ applicant 2) ☐ applicant's representative]

Exhibit shown or demonstration conducted: d) ☐ Yes e) ☒ No. If yes, brief description:

Claim(s) discussed: All

Identification of prior art discussed:

None

Agreement with respect to the claims f) ☒ was reached. g) ☐ was not reached. h) ☐ N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments:

Applicant was informed about the allowability of all pending claims.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

i) ☒ It is not necessary for applicant to provide a separate record of the substance of the interview (if box is checked).

Unless the paragraph above has been checked, THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

Examiner's signature, if required